IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH SEPTEMBER 2006 / 6TH ASWINA 1928

Crl.Rev.Pet.No. 125 of 1998(D)

CRA.85/1993 of SESSIONS COURT, KOTTAYAM
CC.835/1989 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

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REVN. PETITIONER - APPELLANT - ACCUSED:

AJAYAN, S/O. MATHEW, CHETTIATHU,
KAIPUZHA, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:

1. EXCISE INSPECTOR, EXCISE CIRCLE, KOTTAYAM.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SHRI K.G. BHASAKARAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28.9.2006, THE COURT ON THE SAME DAY PASSED THE FOLLWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 125 of 1998

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Dated this the 28th day of September, 2006

O R D E R

The accused in C.C. No.835 of 1989 on the file of the Judicial First Class Magistrate, Kottayam is the Revision Petitioner. He was found guilty of the offence punishable under Section 58 of the Kerala Abkari Act, convicted and sentenced to pay a fine of Rs.1,000/- and in default in payment of fine to undergo simple imprisonment for one month. Criminal Appeal No.85 of 1993 filed by the revision petitioner before the Sessions Court, Kottayam challenging the conviction and sentence imposed by the learned Magistrate was also dismissed. Hence this Criminal Revision Petition.

2. The matter arises from a complaint filed by the Excise Inspector, alleging that on 23.12.1988 at about 8.30 a.m. the revision petitioner was found in possession of 550 ml. of illicit arrack in a bottle having the capacity of 750 ml. According to the

complainant, the petitioner committed the offence punishable under Section 55(a) of the Abkari Act. Petitioner was arrested and released on bail. When he appeared before the learned Magistrate, copies of the relevant documents were furnished to him. The particulars of the offence was read over and explained to the petitioner. He understood the same and pleaded not guilty. On the side of the prosecution, P.Ws. 1 to 4 were examined and Exhibits P1 to P4 were proved and marked. M.Os.1 and 2 were identified. After prosecution evidence was over, the petitioner was questioned under Section 313 Cr.P.C. He denied all the allegations levelled against him. No defence evidence was adduced. Learned Magistrate found that the prosecution failed to establish that the petitioner committed offence punishable under Section 55(a) of the Abkari Act. But further found that the materials on record show that the petitioner was guilty of the offence punishable under Section 58 of the Abkari Act, convicted and sentenced him to pay a fine of Rs.1,000/-. Criminal Appeal filed by the petitioner was also dismissed. Hence this Criminal

Revision Petition.

3. Exhibit P1 seizure mahazar coupled with the evidence of P.Ws. 1 and 3 shows that at or about 8.30 a.m. on 23.12.1988 the petitioner was found to be in possession of 550 ml. of arrack. The same was sent for chemical analysis. Relying on the chemical analysis report, both the courts below found that the contraband article was not arrack sold through authorised shops but illicit arrack and the same was adulterated. This is essentially a finding of fact based on evidence. I do not find any reason to interfere with the said finding of fact. Petitioner was only sentenced to pay a fine of Rs.1,000/-. No grounds are made out to interfere with the concurrent findings and also the sentence imposed on the petitioner The Crl. R.P. is only to be dismissed.

In the result, the Criminal Revision Petition is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 125 of 1998

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O R D E R

28TH SEPTEMBER, 2006